

Robert Shaw Revocable Trust

v.

Town of Colebrook

Docket No.: 20950-04PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2004 ad valorem assessment of \$192,700 (land \$34,200; buildings \$158,500) on two dwellings on two acres not in current use and a current use assessment of \$13,227 on 144 acres in current use, all on Map R-6/Lot 3 (the “Property”). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence; the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. The board finds the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the condition factor on two sheds should be “40” rather than “80” based on the photographs submitted in Taxpayer Exhibit No. 1 and the comparison to another property with a shed;

- (2) the view factor applied to the land of “200” should be reduced to “150” based on comparisons to the adjacent “Rappoport” and “Rella” properties (Tab 9 of Taxpayer Exhibit No. 1);
- (3) regarding steepness, the Property has only a 600 foot driveway sloping upward to the house and therefore a steeper access than the “Rappoport” property, which has a longer driveway;
- (4) using a matrix consisting of four factors (rather than the three factors contained in the Marlow decision), the Town erred because it is access to the current use land, not the house lot, which should be used in the matrix and the topography is hilly and therefore “difficult” and “steep” rather than “average” ratings are warranted on the matrix; and
- (5) the ad valorem and current use assessments should be abated to \$173,350 and \$12,381, respectively, for the reasons stated in the appeal document (included as Tab 1 of Taxpayer Exhibit No. 1).

The Town argued the assessment was proper because:

- (1) the Town performed a 2004 revaluation, followed by a 2006 update;
- (2) the sheds are large, more the size of garages, “stoutly” built with plank floors, are in very good condition for their age, and have a higher utility level than a normal shed (permitting vehicle storage, not just tools or equipment), justifying an “80” factor;
- (3) the view factor of “225” (“200” plus “25” for second dwelling) is justified, based on the Town’s inspections and Municipality Exhibit Nos. A through F (view diagrams, driveway grade, cross-sections and photography);
- (4) the current use matrix developed by Avitar was sent out to all property owners to be filled out and was then reviewed by the Town’s assessor (David Woodward of Avitar);
- (5) regarding access on the matrix, the major consideration was frontage on Town-maintained road versus a back lot, leading to an “average” access rating, and the topography was properly judged to be “average,” not “steep”;

(6) the Taxpayer conceded the market value of the Property (the price he would accept for selling it) is higher than the assessment; and

(7) the Taxpayer failed to meet its burden of proof.

Board's Rulings

The board finds the Taxpayer failed to meet its burden of proving the ad valorem and current use assessments on the Property were disproportional. The appeal is therefore denied for the reasons stated below.

The Taxpayer questioned the Town's assessment of two sheds on the Property. The board finds they are quite large (38 x 38 and 39 x 38 – over 1,400 square feet each), substantially built and can be used to house tractors or other large vehicles, rather than simply for equipment, wood or other storage. See Taxpayer Exhibit No. 1, Tab 4 (photograph showing tractor within one shed). The Town could have reasonably concluded the value of each lies somewhere between a traditional shed and a garage. If they had been rated as garages, their assessments would have been substantially higher. The Taxpayer's comparison to the shed assessment on the "Riendeau" property (shown in Tab 5 of Taxpayer Exhibit No. 1) is not meaningful because it is smaller and has an even higher condition rating ("140") than the rating ("80") of each shed on the Property. The board finds the assessments on each shed (slightly less than \$6,000 each) are not unreasonable in light of their probable contributory market value to the overall Property as a whole. In this regard, the Taxpayer failed to present any evidence to support a lower market value to support a claim of disproportional assessment.

For the two acres of land not in current use, the Taxpayer objected to the Town's use of a "225" condition factor. The Town based this factor on the view from the Property ("200") and the fact the Property has a second dwelling on it (which increased the factor by "25"). The Town provided photographic and topographic evidence to support this determination. See Municipality Exhibit Nos. A.

through F. The Town also requested, but was denied permission by the Taxpayer, to visit the Property to take additional photographs of the views from the house. One of the Town's assessors further testified individual lots in the Town were being sold for approximately \$30,000 and those with views for \$50,000 to \$60,000. In comparison, the assessment for the land not in current use on the Property is \$34,200 with some view and encompassing two house sites. The Taxpayer presented no market value evidence to support a lower land value.

The board further notes the "Rappaport" property had the same initial factor ("200") to account for value enhancement from a view, but adjusted it (to "150") because of steep access conditions. See Tab 8 of Taxpayer Exhibit No. 1. The Taxpayer disagreed a substantial difference existed on steepness conditions between the properties, but did not meet his burden of proof on this issue. In fact, the Town's comparative driveway cross-sections (Municipality Exhibits No. B and C) graphically show the Rappaport access is steeper overall (12% grade vs. Taxpayer's driveway grade of 6%). The "Rella" property had a lower factor ("150"), see Tab 9 of Taxpayer Exhibit No. 1, but appears to be situated lower in elevation by at least 100 feet. See Municipality Exhibit F. If, in fact, the view from "Rella" is comparable or better than from the Property, it may be indicative of that Property being underassessed rather than the Property being overassessed. The possible underassessment of others does not establish disproportionality. Appeal of Cannata, 129 N.H. 399, 401 (1987). Again, the Taxpayer failed to present any market value evidence which would allow the board to conclude the Property is disproportionately assessed. See, generally, Porter v. Town of Sanbornton, 150 N.H. 363, 368-69 (2003) (to prove disproportionality, taxpayer must establish property is assessed at higher percentage of market value than the general level of assessment in the municipality; defects or flaws in assessment methodology might lead to disproportionality, but is not sufficient to prove it).

Turning to the current use assessment on the remaining 144 acres, the board finds some

difference exists between the Town's current use assessment of \$13,227 (see Taxpayer Exhibit No. 1, Tab 6) and the Taxpayer's proposed assessment of \$12,381, as calculated in Taxpayer Exhibit No. 1. The principal differences in these calculations appear to be: the matrix scale used by each party; the relevant range of values for hardwood and all other forest land; and subjective judgments regarding whether access is easy or difficult.

On the matrix issue, the Taxpayer used the 0, 1, 2 scale presented, purely for illustrative purposes, in the Town of Marlow decision (BTLA Docket No. 19478-01RA), whereas the Town used a different scale (resulting in a 28% to 80% range rather than 0% to 100%). The Town noted there was the capability to override the formula calculation if the land being assessed warranted it. The board finds the Town is not obligated to use the Marlow scale, because it was presented in the decision simply as an "example" of a matrix, not one which every municipality must follow exactly. In addition, and notwithstanding its criticisms of the Town's methodology, the Taxpayer failed to show how use of the Town's matrix resulted in a disproportional assessment. See, generally, Porter v. Town of Sanbornton, 150 N.H. 363, 368-69 (2003) (even where flaws may exist in municipality's assessment methodology, a taxpayer still bears the burden of proving it resulted in a disproportionate tax burden).

On the range of values issue, it appears the Taxpayer's computations inadvertently use the hardwood and all other forest land per acre value ranges established by the Current Use Board for tax year 2005 (\$62-\$94 and \$99-\$150, respectively) instead of the correct ranges for tax year 2004 (\$55-\$84 and \$91-\$137, respectively).

Finally, the Taxpayer and the Town disagreed on how the access and slope factors should be rated on the matrix. The Town based its "average" ratings on the fact the Property is situated on a Town-maintained road, rather than being a "back lot," and how its topography compared to other properties in the area. See Municipality Exhibit No. F. Upon review of the relevant evidence, including

the topographical maps showing the relative slopes, changes in height and proximity to public access, the board finds the Taxpayer failed to prove the Town erred in using “average” (rather than “difficult” and “steep”) ratings for these factors, which are, by their nature, subjective and based on relative, rather than absolute, judgments. Even if the Taxpayer were correct in questioning the Town’s judgments, changing these two factors would not result in a material change in either the current use assessment or resulting tax liability.¹

For all of these reasons, the appeal is denied. A motion for rehearing, reconsideration or clarification (collectively “rehearing motion”) of this decision must be filed within thirty (30) days of the clerk’s date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board’s decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(f). Filing a rehearing motion is a prerequisite for appealing to the Supreme Court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board’s denial.

¹ The difference of \$846 in the parties’ respective current use calculations (\$13,227 - \$12,381) amounts to a relatively small difference in net tax liability (\$846 difference times the tax rate (\$25.50/\$1,000) ~ \$21.57). Cf. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985): “Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant.” Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 205, 46 A. 470, 473 (1899) (citations omitted).” In other words, innocuous errors which do not lead to a disproportional assessment do not warrant an abatement. See, e.g., Charlotte E. Gross Revocable Trust of 1995 v. Town of Derry, BTLA Docket No. 19346-01PT (July 17, 2003) (innocuous errors regarding land area descriptions on assessment record card did not result in disproportionality; appeal denied).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Robert W. Shaw, 13 Shaw Dr., Colebrook, NH 03576, Taxpayer Representative; David S. Woodward, Avitar Assessments of New England, PO Box 307, Milan, NH 03588, Contracted Assessor; and Chairman, Board of Selectmen, Town of Colebrook, 10 Bridge St., Colebrook, NH 03576.

Date:

Anne M. Stelmach, Clerk